

1
2 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

3 -----X

4 JOSEPH POGGIOLI, JR.,

5 Plaintiff,

Civ. No.:

6 -against-

07/6674

7 PATRICK J. CARROLL,

8 INDIVIDUALLY, AND THE CITY OF

NEW ROCHELLE, NEW YORK,

9 Defendants.

-----X

10
11 3 Gannett Drive

White Plains, New York

12 October 30, 2007

10:17 AM

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19 Examination before Trial of Plaintiff,
20 JOSEPH POGGIOLI, held pursuant to Order, at the
21 above time and place, before Susie Cabanas-Diaz, a
22 Notary Public of the State of New York.
23
24
25

<p>1 2 APPEARANCES: 3 LOVETT & GOULD, LLP 4 Attorneys for Plaintiff: 5 222 Bloomingdale Road 6 White Plains, New York 10605-1513 7 BY: DRITA NICAJ, ESQ. 8 Email: dnicaj@lovet-gould.com</p> <p>9 10 WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER, LLP 11 Attorneys for Defendants 12 3 Gannett Drive 13 White Plains, New York 10604-3407 14 BY: PETER A. MEISELS, ESQ. 15 Email: peter.meisels@wilsonelser.com</p> <p>16 17 18 19 20 21 22 23 24 25</p>	<p>2 4 1 2 JOSEPH POGGIOLI, a 3 Plaintiff, having been first duly sworn by Susie 4 Cabanas-Diaz, a Notary Public of the State of New 5 York, and stating his address as 25 Wyndham Lane, 6 Carmel, New York 10512, was examined and testified 7 as follows:</p> <p>8 MS. NICAJ: My name is Drita Nicaj. I 9 represent Joseph Poggioli. I would like 10 Mr. Poggioli to have an opportunity to review and 11 correct his deposition transcript once the 12 transcript is available. Will you be providing 13 that, Mr. Meisels?</p> <p>14 MR. MEISELS: No.</p> <p>15 MS. NICAJ: Okay. Then we'll a 16 request a copy.</p> <p>17 MR. MEISELS: And we're requesting a copy 18 as well.</p> <p>19 EXAMINATION BY 20 MR. MEISELS:</p> <p>21 Q Mr. Poggioli, my name is Peter Meisels and 22 I'm going to be asking you some questions about your 23 complaint in this matter. If they're not clear, 24 please tell me and I'll be happy to rephrase them. 25 Fair enough?</p>
<p>3 1 2 IT IS HEREBY STIPULATED AND AGREED, by 3 and between the attorneys for the respective 4 parties hereto, that this examination may be 5 sworn to before any Notary Public.</p> <p>6 7 IT IS FURTHER STIPULATED AND AGREED that 8 the sealing and filing of the said examination 9 shall be waived.</p> <p>10 11 IT IS FURTHER STIPULATED AND AGREED that 12 all objections to questions except as to form 13 shall be reserved for trial.</p> <p>14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>5 1 2 POGGIOLI</p> <p>3 A Yes.</p> <p>4 Q I'm going to show you what's been 5 premarked as Defendants' A for identification and 6 ask you to review that document and then tell me if 7 you can identify it.</p> <p>8 (Defendants' Exhibit A, previously marked for 9 Identification.) 10 (Witness Perusing)</p> <p>11 A I haven't read each word but it looks like 12 a copy of my complaint. If you want me to read each 13 word --</p> <p>14 Q Well, let me ask you a follow-up question 15 before --</p> <p>16 A Can I just add something? I never saw 17 these last two pages before.</p> <p>18 Q Fair enough. In reference to the first 19 five pages of the document, have you ever seen those 20 first five pages before today?</p> <p>21 A Yes.</p> <p>22 Q At the time that you saw them prior to 23 today, did you review them?</p> <p>24 A Yes.</p> <p>25 Q And at the time that you reviewed them, 26 was it your impression that everything in that</p>

2 (Pages 2 to 5)

<p>1 POGGIOLI</p> <p>2 document was accurate?</p> <p>3 MS. NICAJ: Objection. You can answer.</p> <p>4 A Like I said, I didn't read each word. If</p> <p>5 you want me to read each word, I can do that but it</p> <p>6 looks like it is, yes.</p> <p>7 Q Okay. Fair enough. Where are you</p> <p>8 residing now?</p> <p>9 A In Carmel, New York.</p> <p>10 Q The same address as you've had for the</p> <p>11 last several years?</p> <p>12 A Yes.</p> <p>13 Q How long have you lived there?</p> <p>14 A About six years.</p> <p>15 Q Okay. And what is your actual address?</p> <p>16 A 25 Wyndham Lane, Carmel, New York 10512.</p> <p>17 Q And how are you presently employed?</p> <p>18 A I'm not.</p> <p>19 Q And when were you last employed?</p> <p>20 A July 20, 2007.</p> <p>21 Q Are you presently receiving a pension?</p> <p>22 A Yes.</p> <p>23 Q And is that in connection with your prior</p> <p>24 employment as a police officer?</p> <p>25 A Yes.</p>	<p>1 POGGIOLI</p> <p>2 the exact. It might have been \$3,800. It might</p> <p>3 have been almost \$4,000. I don't know the exact</p> <p>4 amount. I only received one.</p> <p>5 Q So would it be correct to say you would</p> <p>6 anticipate that your annual pension payment would be</p> <p>7 approximately between \$36,000 and \$48,000 a year?</p> <p>8 A Yes.</p> <p>9 Q When was your prior employment terminated?</p> <p>10 A July 20, 2007.</p> <p>11 Q Since July 20, 2007, have you applied for</p> <p>12 other employment?</p> <p>13 MS. NICAJ: I'm going to object to this</p> <p>14 line of questioning because this is supposed to</p> <p>15 be a deposition on qualified immunity so I'm</p> <p>16 trying to ascertain from you, Mr. Meisels, what</p> <p>17 the purpose of your deposition concerning</p> <p>18 pension and his applying for other employment</p> <p>19 is RELEVANT to.</p> <p>20 MR. MEISELS: I have no objection, if we</p> <p>21 can agree that I will limit this deposition</p> <p>22 solely to the question of qualified immunity</p> <p>23 provided we can agree that I have a right to</p> <p>24 take a later deposition on the question of</p> <p>25 damages.</p>
<p>1 POGGIOLI</p> <p>2 Q And is that received in a regular check?</p> <p>3 A I don't understand the question.</p> <p>4 Q Let me rephrase it. How do you receive</p> <p>5 your pension payments?</p> <p>6 A I only received one so far and I received</p> <p>7 it via the U.S. mail by check.</p> <p>8 Q Do you know how often you will be</p> <p>9 receiving pension checks?</p> <p>10 A Once a month.</p> <p>11 Q And how much was the check that you</p> <p>12 received?</p> <p>13 A I don't know the exact amount.</p> <p>14 Q Approximately.</p> <p>15 A It was over \$3,000.</p> <p>16 Q Do you anticipate that the future checks</p> <p>17 will be approximately in the same amount?</p> <p>18 A Yes.</p> <p>19 Q So is it correct that you would</p> <p>20 approximate your pension payments to be \$36,000 a</p> <p>21 year?</p> <p>22 A Yes, at least.</p> <p>23 Q Okay. Do you have any reason to believe</p> <p>24 that it may be more than that?</p> <p>25 A Well, it was over \$3,000. I don't know</p>	<p>1 POGGIOLI</p> <p>2 MS. NICAJ: Absolutely.</p> <p>3 Q Now, Mr. Poggioli, I've asked you to take a</p> <p>4 look at what's been marked as Defendants' A for</p> <p>5 identification and particularly refer to the second</p> <p>6 page and in the middle of the page, you see there's</p> <p>7 in bold a heading that says, The Facts?</p> <p>8 A Yes.</p> <p>9 Q And particularly if you would look at</p> <p>10 Paragraph 7 where it says, "On or about</p> <p>11 April 24, 2007 in connection with the rigged</p> <p>12 disciplinary proceeding referenced in the 2000</p> <p>13 filing"?</p> <p>14 MS. NICAJ: Objection. That's not what it</p> <p>15 states.</p> <p>16 MR. MEISELS: Rigged disciplinary</p> <p>17 proceeding.</p> <p>18 MS. NICAJ: Referencing the 2006 filing.</p> <p>19 You said 2000.</p> <p>20 MR. MEISELS: I apologize.</p> <p>21 MS. NICAJ: It's okay. It's not a big</p> <p>22 deal.</p> <p>23 Q Let me start over. In reference to</p> <p>24 Paragraph 7 which reads, "On or about April 24,</p> <p>25 2007 in connection with the rigged disciplinary</p>

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<p>10</p> <p>1 POGGIOLI</p> <p>2 proceeding referenced in the 2006 filing, hearing</p> <p>3 officer Robert J. Ponzini generated a substantially</p> <p>4 falsified and/or materially inaccurate report," and</p> <p>5 it continues.</p> <p>6 As you sit here today, do you know</p> <p>7 which disciplinary proceeding is referenced here as</p> <p>8 being rigged?</p> <p>9 A Yes.</p> <p>10 Q What was that?</p> <p>11 A That was the departmental trial that I had</p> <p>12 and he was the hearing officer for.</p> <p>13 Q What was the basis for your belief that</p> <p>14 that departmental trial was rigged?</p> <p>15 MS. NICAJ: I'm going to object to the</p> <p>16 extent that any -- your basis is formed as a</p> <p>17 result of any attorney/client communications,</p> <p>18 okay? If it does not, then you can go ahead</p> <p>19 and answer it.</p> <p>20 A Well, the hearing and findings from</p> <p>21 Mr. Ponzini when it came out, I spoke to my attorney</p> <p>22 about that so that's attorney/client privilege.</p> <p>23 Q Okay. Other than information that you</p> <p>24 learned in the course of your attorney/client</p> <p>25 communications, do you have any basis to believe</p>	<p>12</p> <p>1 POGGIOLI</p> <p>2 when the actual trial started on December 15 of</p> <p>3 2005.</p> <p>4 Third of all, he didn't sign his name</p> <p>5 to the findings and recommendation on the last page</p> <p>6 of the same.</p> <p>7 Fourth of all, he stated that</p> <p>8 Sergeant Joseph went to the job site at 2:15 a.m.</p> <p>9 when Sergeant Joseph wasn't working that day at that</p> <p>10 time.</p> <p>11 Fifth of all, he stated that had</p> <p>12 Sergeant Joseph went to check -- I'm sorry. I</p> <p>13 rephrase that. That he also stated the page numbers</p> <p>14 on the transcript which stated that he was there at</p> <p>15 2:15 a.m. and the page numbers were erroneous, were</p> <p>16 not accurate. Didn't say anything on those page</p> <p>17 numbers.</p> <p>18 Those are the ones I can remember</p> <p>19 offhand.</p> <p>20 Q Continuing on with Paragraph 7, as you</p> <p>21 sit here today do you have any basis to believe that</p> <p>22 the report was falsified other than information that</p> <p>23 you may have learned in attorney/client</p> <p>24 communications?</p> <p>25 A Well, it was falsified because of some</p>
<p>11</p> <p>1 POGGIOLI</p> <p>2 that the departmental trial was rigged?</p> <p>3 A So are you asking me that --</p> <p>4 MS. NICAJ: If you don't understand, let</p> <p>5 him know.</p> <p>6 Q Would you like me to rephrase it?</p> <p>7 A Yes, please.</p> <p>8 Q Sure. Do you have any basis to believe</p> <p>9 that the departmental trial was rigged other than</p> <p>10 information that you learned based upon your</p> <p>11 attorney/client communications?</p> <p>12 A Yes. By reading the findings and</p> <p>13 recommendation from the hearing officer,</p> <p>14 Mr. Ponzini, I found numerous errors and omissions in</p> <p>15 his findings.</p> <p>16 Q Could you tell me what they were?</p> <p>17 A They were a lot. I can tell you some of</p> <p>18 them, unless I had the findings in front of me.</p> <p>19 Q Do you recall any of them?</p> <p>20 A Yes, I do. First of all, he stated in his</p> <p>21 findings that Officer Edward Hayes was called and</p> <p>22 testified, which he didn't. He was refused the</p> <p>23 opportunity to testify by Mr. Ponzini.</p> <p>24 Second of all, he stated that he was</p> <p>25 appointed the hearing officer on December 18 of 2005</p>	<p>13</p> <p>1 POGGIOLI</p> <p>2 things that the information was inaccurate in the</p> <p>3 report.</p> <p>4 Q Are you aware of any inaccuracies other</p> <p>5 than those to which you've already testified to this</p> <p>6 morning?</p> <p>7 A Yes.</p> <p>8 Q Could you tell me what those were?</p> <p>9 A I told you there were several. I just</p> <p>10 named you five. If I had the report in front of me,</p> <p>11 I could name a lot more.</p> <p>12 Q As you sit here today, can you think of</p> <p>13 any others?</p> <p>14 A I could just think of those five right</p> <p>15 now.</p> <p>16 Q Of the five that you mentioned --</p> <p>17 withdrawn.</p> <p>18 Of the five inaccuracies that you</p> <p>19 mentioned, is there any basis to conclude that any</p> <p>20 of those mistakes were actually falsified?</p> <p>21 A Could you say that again, please.</p> <p>22 Q Yes. Let me rephrase it.</p> <p>23 A Thank you.</p> <p>24 Q Is there any basis for you to believe that</p> <p>25 those inaccuracies were actually falsified?</p>

4 (Pages 10 to 13)

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<p style="text-align: right;">14</p> <p>1 POGGIOLI</p> <p>2 A Well, they were not correctly put in his</p> <p>3 findings and recommendation. During the testimony</p> <p>4 it was not what he said. Does that explain it to</p> <p>5 you?</p> <p>6 Q Yes. Is that the basis for your belief</p> <p>7 that they were falsified?</p> <p>8 A Yes. During the testimony it was different</p> <p>9 than what he said.</p> <p>10 Q Okay. Can you turn the page and the first</p> <p>11 full sentence on Page 3 where it says, "Ponzini</p> <p>12 did so in accordance with his well established and</p> <p>13 publicly known reputation for always and/or</p> <p>14 virtually always finding governmental employees</p> <p>15 guilty."</p> <p>16 Are you personally aware of any</p> <p>17 reputation that Mr. Ponzini has in reference to</p> <p>18 finding governmental employees guilty?</p> <p>19 A I do with my attorney/client</p> <p>20 communication.</p> <p>21 Q Okay. Aside from any information that you</p> <p>22 may have learned through attorney/client</p> <p>23 communications, do you have any basis to believe</p> <p>24 that Mr. Ponzini has a reputation for finding</p> <p>25 governmental employees guilty?</p>	<p style="text-align: right;">16</p> <p>1 POGGIOLI</p> <p>2 down.</p> <p>3 Q Could we move on to Paragraph 9 and</p> <p>4 particularly I'm referring to the first sentence of</p> <p>5 Paragraph 9 where it says, "On July 20, 2007,</p> <p>6 Respondents in writing terminated Plaintiff's</p> <p>7 employment, a termination that was motivated in</p> <p>8 whole and/or substantial respect by: A) Plaintiff's</p> <p>9 2006 filing and/or the substantive allegations</p> <p>10 contained in the complaint."</p> <p>11 Now your complaint refers to a 2006</p> <p>12 filing. Are you referencing a lawsuit that you</p> <p>13 brought in 2006?</p> <p>14 A Yes.</p> <p>15 Q Okay. And what is the basis for your</p> <p>16 belief that your termination was motivated as a</p> <p>17 result of your filing that 2006 lawsuit?</p> <p>18 A It's obvious that the police commissioner</p> <p>19 wasn't happy that I filed another federal complaint</p> <p>20 against him because I had done so previously in 1994</p> <p>21 and prevailed. He always thought that I was a thorn</p> <p>22 in his side being the PBA president previously and</p> <p>23 this was just a motivation on his part.</p> <p>24 Q And when you say that it was obvious that</p> <p>25 he wasn't happy, okay, how did that manifest itself?</p>
<p style="text-align: right;">15</p> <p>1 POGGIOLI</p> <p>2 A The only information that I have is with</p> <p>3 my attorney/client communication.</p> <p>4 Q Moving to the second full sentence on the</p> <p>5 top of Page 3 where it says, "In fact by reason</p> <p>6 of his established record of convicting such</p> <p>7 employees, he was appointed to preside over the</p> <p>8 Poggioli disciplinary since the appointing authority</p> <p>9 knew that in exchange for pecuniary gain, Ponzini</p> <p>10 would convict plaintiff regardless of the evidence."</p> <p>11 Aside from any information that you</p> <p>12 may have learned in the course of your</p> <p>13 attorney/client communications, do you have any</p> <p>14 reason to believe that this statement is true?</p> <p>15 A I believe it to be true.</p> <p>16 Q And aside from any information that you</p> <p>17 learned in the course of your attorney/client</p> <p>18 communications, what is the basis for your belief</p> <p>19 that it's true?</p> <p>20 A Well, he did convict me.</p> <p>21 Q Other than that, do you have any other</p> <p>22 basis to believe that it's true?</p> <p>23 A He was asked by my attorney to not hear</p> <p>24 the case because of previous other indiscretions</p> <p>25 that he was involved in and he decided not to step</p>	<p style="text-align: right;">17</p> <p>1 POGGIOLI</p> <p>2 A Well, I don't think anyone would be happy</p> <p>3 if you file a federal complaint against you,</p> <p>4 especially that I filed one previously and prevailed</p> <p>5 against him.</p> <p>6 Q You mentioned that, in substance, and I'm</p> <p>7 not trying to quote you exactly, but he always thought</p> <p>8 you were a thorn in his side when you were PBA</p> <p>9 president; is that right?</p> <p>10 A Yes.</p> <p>11 Q How did is that manifest itself?</p> <p>12 A My job as PBA president was to look after</p> <p>13 the welfare of my members in many different ways,</p> <p>14 and, of course, clashing with the administration was</p> <p>15 something that I had to undertake to get better</p> <p>16 equipment, better working conditions for not only my</p> <p>17 members but also for the public safety.</p> <p>18 Q And did it manifest itself in any other</p> <p>19 way other than what you've already mentioned?</p> <p>20 A Well, there was a lot of different things</p> <p>21 that went on during my four years as PBA president.</p> <p>22 Contract disputes, television appearances, being on</p> <p>23 the radio, newspaper. Obviously mentioning the</p> <p>24 conditions that my members were going through and</p> <p>25 was getting put on television and in the newspaper</p>

5 (Pages 14 to 17)

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<p>18</p> <p>1 POGGIOLI</p> <p>2 didn't have a good light on the commissioner.</p> <p>3 Q And am I correct that your term of office</p> <p>4 as PBA president expired on December 31st, 2003?</p> <p>5 A I think that was the year, yes, sir.</p> <p>6 Q Referring back to Paragraph 9 on Page</p> <p>7 3 of your complaint, in reference to</p> <p>8 subparagraph B which reads, "Evidence of corruption</p> <p>9 rampant in the city government including its court</p> <p>10 and police department as adduced by Plaintiff during</p> <p>11 the disciplinary proceedings as presided over by</p> <p>12 Ponzini." You see that?</p> <p>13 A Yes, sir.</p> <p>14 Q What evidence of corruption in city</p> <p>15 government was disclosed at the disciplinary</p> <p>16 proceeding to which you refer to here?</p> <p>17 MS. NICAJ: Objection. You can answer.</p> <p>18 A There were numerous incidents that I</p> <p>19 mentioned during the -- that was mentioned during</p> <p>20 the trial of theft from departmental employees,</p> <p>21 criminal mischief and they were mentioned in the</p> <p>22 trial itself.</p> <p>23 Q Okay. Now other than theft and criminal</p> <p>24 mischief, as you sit here today do you recall any</p> <p>25 other evidence of corruption in city government that</p>	<p>20</p> <p>1 POGGIOLI</p> <p>2 disciplinary proceeding against you about this</p> <p>3 city court. You understand?</p> <p>4 THE WITNESS: Yes.</p> <p>5 MS. NICAJ: At the hearing itself, okay?</p> <p>6 THE WITNESS: She explained it.</p> <p>7 MR. MEISELS: You got it? Okay. Good.</p> <p>8 A Thank you. Yes, that there was employees</p> <p>9 involved in use of drugs and larceny in the city</p> <p>10 court.</p> <p>11 Q Do you know whether or not the employees</p> <p>12 in the city court are employed by the State of New</p> <p>13 York or the city of New Rochelle or some other</p> <p>14 entity?</p> <p>15 A I know that some of the employees are</p> <p>16 employees of the State of New York and some of them</p> <p>17 are employees of the city of New Rochelle. I don't</p> <p>18 know which ones, though.</p> <p>19 Q In reference to the persons who were</p> <p>20 alleged to have used drugs, do you know whether</p> <p>21 those persons were state employees or city</p> <p>22 employees?</p> <p>23 A I'm sorry, I don't know.</p> <p>24 Q Okay. In reference to the persons who</p> <p>25 allegedly committed a larceny, do you know whether</p>
<p>19</p> <p>1 POGGIOLI</p> <p>2 was disclosed during your disciplinary hearing?</p> <p>3 A Yes, there was mention of the -- of city</p> <p>4 court.</p> <p>5 Q And do you recall what was mentioned about</p> <p>6 the city court?</p> <p>7 A That was client/attorney communication.</p> <p>8 Q Okay. Now I'm not asking you about the</p> <p>9 substance of any attorney/client communication. I</p> <p>10 am asking you about what was disclosed on the record</p> <p>11 at the disciplinary hearing. Was anything in</p> <p>12 reference to the city court disclosed on the record</p> <p>13 at the disciplinary hearing?</p> <p>14 A Yes.</p> <p>15 Q Could you tell me what that was?</p> <p>16 A Involving the city marshal.</p> <p>17 Q Anything else that you recall?</p> <p>18 A Involving the employees of the court.</p> <p>19 Q Do you recall which employees?</p> <p>20 A Again, this is information that I had with</p> <p>21 my attorney.</p> <p>22 MS. NICAJ: It's whatever you communicated</p> <p>23 with your attorney, do not disclose to</p> <p>24 Mr. Meisels, but he, I think, is asking what, if</p> <p>25 any, information, did you learn through the</p>	<p>21</p> <p>1 POGGIOLI</p> <p>2 those persons were state employees or city</p> <p>3 employees?</p> <p>4 A I'm sorry, I don't know.</p> <p>5 Q Earlier you had mentioned that during the</p> <p>6 course of your disciplinary [sic], you became aware</p> <p>7 that there had been theft in city government, is</p> <p>8 that correct?</p> <p>9 MS. NICAJ: Objection. You can answer.</p> <p>10 A Yes.</p> <p>11 Q Was that the theft -- withdrawn.</p> <p>12 Is that theft the same incident that</p> <p>13 you just referenced concerning a larceny in the city</p> <p>14 court?</p> <p>15 A Could you say that again, please.</p> <p>16 Q Sure. The theft that you mentioned</p> <p>17 earlier, is that the same incident that you just</p> <p>18 referenced as a larceny and occurring in the city</p> <p>19 court?</p> <p>20 A The theft and the larceny pertaining to</p> <p>21 the city court?</p> <p>22 Q Right. Are they the same?</p> <p>23 A Yes.</p> <p>24 Q You had mentioned criminal mischief</p> <p>25 earlier in your testimony this morning. Do you have</p>

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<p>1 POGGIOLI 22</p> <p>2 any additional information about that criminal</p> <p>3 mischief?</p> <p>4 A That was pertaining to a -- one of the</p> <p>5 police department's employees.</p> <p>6 Q And which employee did that pertain to?</p> <p>7 A That was Detective John Landau.</p> <p>8 Q Can you tell me in substance what it is</p> <p>9 that he's alleged to have done?</p> <p>10 A He tampered with my access card.</p> <p>11 Q Anything else?</p> <p>12 A He previously was charged in and I believe</p> <p>13 suspended for falsifying a police report.</p> <p>14 Q How long was he suspended for, do you know?</p> <p>15 A I don't know. He might have lost days.</p> <p>16 He might not have received a suspension. He might</p> <p>17 have lost days.</p> <p>18 Q And did that information come out at the</p> <p>19 disciplinary hearing?</p> <p>20 A Some of it did.</p> <p>21 Q What came out at the hearing?</p> <p>22 A The tampering of my access card.</p> <p>23 Q And in reference to the alleged tampering</p> <p>24 of the access card, did you ever report that to</p> <p>25 anybody?</p>	<p>1 POGGIOLI 24</p> <p>2 specifically, he mentioned that Detective Landau</p> <p>3 probably did it.</p> <p>4 Q Probably did it.</p> <p>5 A He might have said he did it.</p> <p>6 Q But let me rephrase my question. At the</p> <p>7 time that it was investigated, do you know whether</p> <p>8 or not the police department garnered sufficient</p> <p>9 evidence to conclude that Detective Landau did what</p> <p>10 you accused him of doing?</p> <p>11 A There was an investigation and I'm sure</p> <p>12 they had enough evidence to preclude that, yes.</p> <p>13 Q When you say you're sure, what's the basis</p> <p>14 for your being sure that they had enough evidence?</p> <p>15 A Well, there was two, only two people that</p> <p>16 had the capability of tampering with the access card</p> <p>17 and one of them was my good friend, Detective</p> <p>18 Donald.</p> <p>19 Q And he denied --</p> <p>20 A And Detective Landau did not like me.</p> <p>21 Q So is it fair to say from that you would</p> <p>22 conclude it must have been Detective Landau who did</p> <p>23 it but not Detective Donald? Officer Donald,</p> <p>24 A Detective Donald would not have done that.</p> <p>25 He's a friend of mine.</p>
<p>1 POGGIOLI 23</p> <p>2 A Yes.</p> <p>3 Q To whom did you report it?</p> <p>4 A Lieutenant Fortunato.</p> <p>5 Q Do you know whether or not that was ever</p> <p>6 investigated?</p> <p>7 A Yes, it was.</p> <p>8 Q Do you know what the outcome of the</p> <p>9 investigation was?</p> <p>10 A Yes.</p> <p>11 Q What was the outcome?</p> <p>12 A Nothing was done.</p> <p>13 Q Do you know whether or not there was ever</p> <p>14 sufficient information to conclude that Detective</p> <p>15 Landau had done what you thought he had done?</p> <p>16 A Can I just add something? Captain Kealy</p> <p>17 was also notified by myself about that.</p> <p>18 Q Do you know whether or not they had ever</p> <p>19 garnered enough evidence to conclude that Detective</p> <p>20 Landau had done what you accused him of doing?</p> <p>21 A Well, there was only two people that could</p> <p>22 have possibly done that and the other person was</p> <p>23 Detective Donald, and Detective Donald is a good</p> <p>24 friend of mine and he said during the trial that</p> <p>25 Detective Landau -- if he didn't say it</p>	<p>1 POGGIOLI 25</p> <p>2 Q Earlier this morning you had referenced</p> <p>3 information that came out at your disciplinary</p> <p>4 concerning the city marshal. What information came</p> <p>5 out at your disciplinary hearing about the city</p> <p>6 marshal?</p> <p>7 A I don't remember exactly.</p> <p>8 Q Let's go to Paragraph 10 --</p> <p>9 A Can I just add something?</p> <p>10 Q Sure.</p> <p>11 A I don't remember now because I don't have</p> <p>12 the testimony in front of me, transcripts of the</p> <p>13 information pertaining to the city marshal, if that</p> <p>14 came out in the trial or not.</p> <p>15 Q Okay.</p> <p>16 A I apologize.</p> <p>17 Q It's okay. In reference to Paragraph 10</p> <p>18 of your complaint where it says, "Members of the</p> <p>19 police department who have engaged in criminal wrong-</p> <p>20 doing on the job as known by defendants and</p> <p>21 identified during plaintiff's disciplinary hearing</p> <p>22 as well as other members of the department who</p> <p>23 wholesale violated and continue to violate the</p> <p>24 federal civil rights of the only police officer of</p> <p>25 Middle Eastern descent employed by the city have</p>

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<p>26</p> <p>1 POGGIOLI</p> <p>2 neither been subjected to formal disciplinary</p> <p>3 charges nor terminated by the city's employ." Okay.</p> <p>4 Going back to the first line of</p> <p>5 Paragraph 10 other than what you've testified to</p> <p>6 already today, are you aware of any other criminal</p> <p>7 wrongdoing perpetrated by members of the police</p> <p>8 department?</p> <p>9 A There are several of wrongdoings by</p> <p>10 members of the police department.</p> <p>11 Q Could you explain?</p> <p>12 A I was waiting for you to say that. You</p> <p>13 want the whole incidents of the incidents involved</p> <p>14 or --</p> <p>15 Q Yes. Tell me anything that this</p> <p>16 references when you talk about -- the paragraph</p> <p>17 talks about, "Member of the police department</p> <p>18 engaged in criminal wrongdoing on the job."</p> <p>19 MS. NICAJ: My suggestion is identify the</p> <p>20 members and then he can follow up with what</p> <p>21 he'll follow up with.</p> <p>22 Q It's an excellent suggestion.</p> <p>23 A Detective Landau, Detective Grosso,</p> <p>24 G-R-O-S-S-O, Detective D'Andrea, D apostrophe</p> <p>25 A-N-D-R-E-A. Detective -- he was a patrolman at the</p>	<p>28</p> <p>1 POGGIOLI</p> <p>2 A I'm not sure and please don't hold me to</p> <p>3 it but I think it was in a drug arrest.</p> <p>4 Q And what is the basis for your belief that</p> <p>5 Detective Landau falsified a police report?</p> <p>6 A Because I believe he was suspended.</p> <p>7 Q And from whom did you learn that he</p> <p>8 allegedly falsified a police report?</p> <p>9 A Well, the New Rochelle police department</p> <p>10 is a very small department and word gets around</p> <p>11 quickly when somebody gets suspended.</p> <p>12 Q So this was sort of by word of mouth?</p> <p>13 A Yes, everybody knows about it.</p> <p>14 Q So by word of mouth you had heard that he</p> <p>15 got suspended?</p> <p>16 A Suspended or lost days. I don't recall.</p> <p>17 I think it was suspension but I'm not sure on that</p> <p>18 one.</p> <p>19 Q Did you ever talk to him about it?</p> <p>20 A No, I'm not friendly with him.</p> <p>21 Q Okay. Now earlier you had spoken about</p> <p>22 the court employees using drugs. How did you learn</p> <p>23 about that?</p> <p>24 A Through my attorney.</p> <p>25 Q Okay. Earlier you talked about a larceny</p>
<p>27</p> <p>1 POGGIOLI</p> <p>2 time, now he's a detective. Torres.</p> <p>3 Q How do you spell that?</p> <p>4 A T-O-R-R-E-S.</p> <p>5 Q Okay.</p> <p>6 A Did you have that right?</p> <p>7 Q I did actually. Surprisingly.</p> <p>8 A Those are the one I can think of offhand.</p> <p>9 Q In reference to the person you first</p> <p>10 mentioned, Detective Landau, is that the incident</p> <p>11 that you've already described concerning your access</p> <p>12 card?</p> <p>13 A Yes.</p> <p>14 Q Okay.</p> <p>15 A And the falsifying the police report.</p> <p>16 Q Concerning the alleged falsification of</p> <p>17 the police report by Detective Landau, do you know</p> <p>18 when that is alleged to have occurred?</p> <p>19 A No, but the department has the records on</p> <p>20 it.</p> <p>21 Q Do you know what year it's alleged to have</p> <p>22 occurred?</p> <p>23 A No.</p> <p>24 Q Do you know what kind of a report was</p> <p>25 allegedly falsified?</p>	<p>29</p> <p>1 POGGIOLI</p> <p>2 in the court. How did you learn about that?</p> <p>3 A Attorney/client communication.</p> <p>4 Q Okay. Any -- earlier you had mentioned</p> <p>5 that there was some negative information about the</p> <p>6 city marshal at your disciplinary hearing, is that</p> <p>7 right?</p> <p>8 A I think I corrected myself on that one.</p> <p>9 Q Okay. You're not sure if that came out or</p> <p>10 not?</p> <p>11 A Right.</p> <p>12 Q Now what is it that Detective Grosso is</p> <p>13 alleged to have done incorrectly?</p> <p>14 A Grosso.</p> <p>15 Q Grosso, I'm sorry.</p> <p>16 A He was involved in the larceny.</p> <p>17 Q And when did the larceny occur?</p> <p>18 A I don't recall the time frame. I think I</p> <p>19 was PBA president at the time. I'm not sure.</p> <p>20 Q And what is it that he's alleged to have</p> <p>21 stolen?</p> <p>22 A It's alleged that there were -- his unit</p> <p>23 was doing a raid on a particular house and that he</p> <p>24 took the cable box. Took a cable box.</p> <p>25 Q And do you know whether that allegation</p>

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<p>1 POGGIOLI 30</p> <p>2 was ever investigated by the department?</p> <p>3 A Yes, it was.</p> <p>4 Q And how do you know that?</p> <p>5 A He lost his gold shield and was</p> <p>6 reassigned.</p> <p>7 Q And how did you learn that he had been</p> <p>8 penalized by losing his gold shield and being</p> <p>9 reassigned?</p> <p>10 A He went from a Detective unit into a</p> <p>11 patrol unit which is, to be nice, a step down I</p> <p>12 would say.</p> <p>13 Q And am I correct that you became aware of</p> <p>14 that by word of mouth?</p> <p>15 A And I think it was during my tenure as PB</p> <p>16 president.</p> <p>17 Q At the time that he was disciplined, did</p> <p>18 he, as far as you know, have a prior disciplinary</p> <p>19 record with the department?</p> <p>20 A I have no knowledge of that.</p> <p>21 Q Did you ever have any direct information</p> <p>22 about the investigation that was conducted</p> <p>23 concerning the allegation of stealing the cable box?</p> <p>24 A Direct, no.</p> <p>25 Q Concerning Detective D'Andrea, what is it</p>	<p>1 POGGIOLI 32</p> <p>2 MS. NICAJ: Objection. You can answer.</p> <p>3 A I represented him as PBA president.</p> <p>4 Q And do you recall how much of a suspension</p> <p>5 he received?</p> <p>6 A I believe the commissioner wanted 30 days.</p> <p>7 I got it down to 20 I think.</p> <p>8 Q Twenty?</p> <p>9 A Twenty days.</p> <p>10 Q Twenty days. And what was the nature of</p> <p>11 the reassignment that he received?</p> <p>12 A He was put inside and in charge of the --</p> <p>13 I don't know his exact title, communication</p> <p>14 supervisor in charge of the communication room and</p> <p>15 the cameras and things like that.</p> <p>16 Q And that assignment that he received, being</p> <p>17 in charge of communication, was in lieu of some other</p> <p>18 assignment?</p> <p>19 MS. NICAJ: Objection. You can answer.</p> <p>20 A Explain it to me, please.</p> <p>21 Q Sure. Let me rephrase it. Before he got</p> <p>22 reassigned, what were his duties?</p> <p>23 A He was a detective in the general</p> <p>24 investigations unit.</p> <p>25 Q I see. And he got reassigned out of</p>
<p>1 POGGIOLI 31</p> <p>2 he is alleged to have done wrong?</p> <p>3 A Detective D'Andrea was a detective in the</p> <p>4 general investigations unit and he had a case and</p> <p>5 somehow it involved the confiscation or the taking</p> <p>6 of computerized evidence.</p> <p>7 Q And what is it that he allegedly did</p> <p>8 wrong?</p> <p>9 A The computer was logged into the property</p> <p>10 clerk's office, room, and he without authorization</p> <p>11 or permission, signed it out and brought it to his</p> <p>12 house for his personal use.</p> <p>13 Q Do you know if that incident was</p> <p>14 investigated by the department?</p> <p>15 A Yes, it was.</p> <p>16 Q Do you know what the outcome of the</p> <p>17 investigation was?</p> <p>18 A He was suspended and reassigned.</p> <p>19 Q And what is the basis for your belief that</p> <p>20 the matter was investigated?</p> <p>21 A Because I was PBA president and I was --</p> <p>22 fought successfully so that he would not get</p> <p>23 terminated.</p> <p>24 Q So in effect you represented him in</p> <p>25 negotiating with the department?</p>	<p>1 POGGIOLI 33</p> <p>2 general investigations but to the communication</p> <p>3 unit?</p> <p>4 A Yes.</p> <p>5 Q Okay. At the time that this occurred, do</p> <p>6 you know what his prior disciplinary record was?</p> <p>7 A No.</p> <p>8 Q You mentioned Detective Torres. What is</p> <p>9 it that he is alleged to have done?</p> <p>10 A He was involved in a hit and run with</p> <p>11 injury while being DWI in White Plains off duty.</p> <p>12 Q And was that -- let me withdraw that.</p> <p>13 Do I understand you correctly that</p> <p>14 the allegation was that he personally hit somebody</p> <p>15 in White Plains and then they were injured, is that</p> <p>16 correct?</p> <p>17 A Yes, it was a hit and run.</p> <p>18 Q Okay. And he was allegedly the driver?</p> <p>19 A He was the driver.</p> <p>20 Q He was the driver. Okay. And that</p> <p>21 occurred in White Plains?</p> <p>22 A Yes.</p> <p>23 Q And he was allegedly drunk at the time?</p> <p>24 A Yes.</p> <p>25 Q And was that investigated by the New</p>

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1 **POGGIOLI**

2 Rochelle police department?

3 A I believe and I'm not sure but it was not

4 only investigated by the New Rochelle police

5 department but also by the White Plains police

6 department and the Harrison police department.

7 Q And what was the outcome of the New

8 Rochelle police department investigation?

9 A He was suspended.

10 Q Okay, for how long?

11 A He was suspended I think for 30 days. I

12 think. I'm not sure on that.

13 Q And was there any other than penalty

14 imposed?

15 A I know he was suspended. I don't know if

16 there was anything else, any other penalty imposed.

17 Q When did this occur?

18 A I don't know the year.

19 Q Did it occur after the year 2000?

20 A No.

21 Q Before 2000?

22 A I believe so, yes. Yes, it was.

23 Q Do you know if it occurred before 1995?

24 A I'm sorry, I don't know.

25 Q Would you know if it occurred after 1995?

35

1 **POGGIOLI**

2 A No, I'm sorry.

3 Q Do you know if it occurred in the 1990s?

4 A I don't know. Sorry.

5 Q As far as you know is Detective Torres

6 still employed by the New Rochelle police

7 department?

8 A Yes, he is.

9 Q What is the basis for your information

10 about this incident concerning Detective Torres?

11 A Well, like I said, when something happens

12 in the police department everybody knows about it.

13 Q Okay, so it's word of mouth?

14 A Word of mouth.

15 Q In reference --

16 A Can I just add something?

17 Q Sure.

18 A There were others. I just can't think of

19 them right now.

20 Q Okay. If you think of them in the course

21 of the deposition, stop me and inform us.

22 A Okay. Thank you.

23 Q Mr. Poggioli, were you ever offered a

24 suspension in satisfaction of the charges that

25 ultimately were heard in your disciplinary hearing?

36

1 **POGGIOLI**

2 A I was offered days -- I'm sorry. I was

3 offered to lose days' pay, yes.

4 Q Do you recall how many days that was?

5 A I think it was 30 days but I don't know if

6 it was 30 calendar days or 30 paid days.

7 Q It would be one or the other?

8 A Yes.

9 Q And am I correct that you rejected that

10 proposal?

11 A There was more to it.

12 Q Okay. What else was involved?

13 A They also wanted for me to be suspended

14 from off duty work for six months.

15 Q So am I correct that the offer was that

16 you would lose 30 days either pay or calendar days

17 plus be suspended from off duty employment for six

18 months?

19 A I think it was -- yes, but I think it was

20 a 30-day suspension now that I -- I think it was 30

21 days' suspension. Suspended for 30 days.

22 Q So it would be a 30 day suspension plus

23 loss of off duty employment for six months?

24 A Yes.

25 Q And when the term off duty employment is

37

1 **POGGIOLI**

2 used, does that refer to the special duty

3 employment?

4 A Yes.

5 Q And is that the special duty employment

6 that you received through the department?

7 A Yes.

8 Q And am I correct that you rejected that

9 proposal?

10 A Yes.

11 Q Was there a reason that you rejected it?

12 A I wasn't guilty.

13 Q Let's go back to Paragraph 10 of the

14 complaint where we -- withdrawn.

15 Going to back to Paragraph 10 of the

16 complaint where it references, "Members of the

17 department who wholesale violated and continue to

18 violate the federal civil rights of the only police

19 officer of Middle Eastern descent."

20 Can you identify which police officer

21 is responsible for violating the federal civil

22 rights of the only police officer of Middle Eastern

23 descent?

24 A That's attorney/client communication.

25 Q Other than communications that you've had

10 (Pages 34 to 37)

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<p>1 POGGIOLI 38</p> <p>2 with your attorneys, do you have any information</p> <p>3 about the identities of police officers who violated</p> <p>4 the civil rights of the only police officer of</p> <p>5 Middle Eastern descent?</p> <p>6 A Besides my communications with my</p> <p>7 attorney?</p> <p>8 Q Yes.</p> <p>9 A No.</p> <p>10 Q So am I correct that your communications</p> <p>11 with your attorney is the sole basis for your belief</p> <p>12 concerning this incident?</p> <p>13 A Yes.</p> <p>14 Q Okay. Do you know who -- withdrawn.</p> <p>15 Can you identify the officer who</p> <p>16 allegedly is the only police officer of middle</p> <p>17 eastern descent?</p> <p>18 A P.O. Ali [sic]. I think it's A-L-I, the</p> <p>19 spelling of his name. I don't know.</p> <p>20 MS. NICAJ: You should know it.</p> <p>21 MR. MEISELS: But I'm not under oath. I</p> <p>22 can't testify.</p> <p>23 A You know who I mean, though.</p> <p>24 Q Okay. So your best understanding of his</p> <p>25 name is --</p>	<p>1 POGGIOLI 40</p> <p>2 A I don't think they were.</p> <p>3 Q Other than communications with your</p> <p>4 lawyers, do you have any basis to believe that?</p> <p>5 A No.</p> <p>6 Q And turning the page at the first full</p> <p>7 sentence where it says, "Instead that criminal</p> <p>8 misconduct and those civil rights violations have</p> <p>9 been encouraged, condoned and ratified by</p> <p>10 Defendants." And let me break that down into two</p> <p>11 parts.</p> <p>12 In reference to the allegation that</p> <p>13 criminal misconduct was encouraged, condoned and</p> <p>14 ratified by the defendants, what is the basis for</p> <p>15 your belief that the defendants in this lawsuit</p> <p>16 encouraged, condoned and ratified criminal</p> <p>17 misconduct?</p> <p>18 MS. NICAJ: Objection. You can answer.</p> <p>19 A That's attorney/client communication.</p> <p>20 Q Other than communications that you had</p> <p>21 with your attorneys, do you have any basis to</p> <p>22 believe that the defendants in this case encouraged,</p> <p>23 condoned and ratified criminal misconduct?</p> <p>24 A No.</p> <p>25 Q Other than communications with your</p>
<p>1 POGGIOLI 39</p> <p>2 A Ali.</p> <p>3 Q Okay. Fine. Officer Ali, what -- have</p> <p>4 you ever spoken to that particular officer about</p> <p>5 having been discriminated against?</p> <p>6 A We had conversations. I don't remember if</p> <p>7 we spoke anything about pertaining to that.</p> <p>8 Q When was the last time you spoke to him?</p> <p>9 A It was probably in July of this year.</p> <p>10 Q Was it before you were terminated?</p> <p>11 A Yes.</p> <p>12 Q Am I correct that you've never discussed</p> <p>13 his complaints about discrimination with him?</p> <p>14 MS. NICAJ: Objection.</p> <p>15 A I don't think so.</p> <p>16 Q Other than communications with your</p> <p>17 attorneys, do you have any basis to believe that</p> <p>18 police officers who violated Officer Alali's civil</p> <p>19 rights were not subjected to disciplinary charges?</p> <p>20 A Can you say that again.</p> <p>21 Q Yeah, sure. Other than communications</p> <p>22 with your attorneys, do you have any basis to</p> <p>23 believe that officers who violated Officer Alali's</p> <p>24 civil rights were not subjected to disciplinary</p> <p>25 charges?</p>	<p>1 POGGIOLI 41</p> <p>2 attorneys, do you have any basis to believe that the</p> <p>3 defendants in this case have encouraged, condoned</p> <p>4 and ratified civil rights violations?</p> <p>5 A Against who?</p> <p>6 Q Against any person.</p> <p>7 A You're going to have to rephrase that</p> <p>8 again, please.</p> <p>9 Q Sure. Other than communications with your</p> <p>10 attorneys, do you have any basis to believe that the</p> <p>11 defendants in this case have encouraged, condoned</p> <p>12 and ratified civil rights violations?</p> <p>13 MS. NICAJ: Objection. You can answer.</p> <p>14 A Against whom?</p> <p>15 Q Against any person.</p> <p>16 A Against myself.</p> <p>17 Q And concerning yourself, are you referring</p> <p>18 to the alleged civil rights violations in this</p> <p>19 complaint?</p> <p>20 A Yes.</p> <p>21 Q Okay. Now, and again referring to the top</p> <p>22 of Page 4, other than communications with your</p> <p>23 attorneys, do you have any reason to believe that</p> <p>24 the defendants in this case have encouraged,</p> <p>25 condoned and ratified civil rights violations</p>

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<p>42</p> <p>1 POGGIOLI</p> <p>2 against persons other than you?</p> <p>3 MS. NICAJ: Objection. You can answer.</p> <p>4 A No.</p> <p>5 Q Other than the city employees that you</p> <p>6 have already mentioned in your deposition this</p> <p>7 morning, can you identify any person who you believe</p> <p>8 was treated better than you were who committed,</p> <p>9 allegedly committed, acts of misconduct which were</p> <p>10 the same or more serious than you were accused of</p> <p>11 committing?</p> <p>12 A Can you rephrase that, please.</p> <p>13 Q Sure. Other than the city employees who</p> <p>14 you've already identified this morning in your</p> <p>15 deposition, can you identify any person who you</p> <p>16 believe received better treatment than you did even</p> <p>17 though they were accused of committing an offense</p> <p>18 which was either similarly serious to the one you're</p> <p>19 accused of or more serious than the one you were</p> <p>20 accused of?</p> <p>21 MS. NICAJ: Objection. You can answer.</p> <p>22 A That's a loaded question.</p> <p>23 Q Okay. It wasn't meant to be.</p> <p>24 A It was a lot.</p> <p>25 Q Okay.</p>	<p>44</p> <p>1 POGGIOLI</p> <p>2 disciplinary hearing?</p> <p>3 A I don't know.</p> <p>4 Q In reference to Detective Grosso, do you</p> <p>5 know whether or not there was a disciplinary</p> <p>6 hearing?</p> <p>7 A I don't know.</p> <p>8 Q In reference to Detective D'Andrea, do you</p> <p>9 know if there was a disciplinary hearing?</p> <p>10 A No, I don't know.</p> <p>11 Q In reference to Detective Torres, do you</p> <p>12 know if there was a disciplinary hearing?</p> <p>13 A I don't know. I'm sorry.</p> <p>14 Q Okay. Am I correct as you sit here today</p> <p>15 those are the four names that you can recall?</p> <p>16 A Yes.</p> <p>17 Q Okay. Now in reference to Detective</p> <p>18 Landau, do you know whether or not he was</p> <p>19 interviewed by the internal affairs department?</p> <p>20 A I don't know.</p> <p>21 Q Do you know whether or not he was</p> <p>22 interviewed by anyone concerning the allegation that</p> <p>23 he had tampered with your access card?</p> <p>24 A I know he was interviewed by Captain</p> <p>25 Keahy.</p>
<p>43</p> <p>1 POGGIOLI</p> <p>2 MS. NICAJ: Do you want to have the</p> <p>3 question read back?</p> <p>4 A You just asked a lot of things in one</p> <p>5 sentences. I thought anyway.</p> <p>6 Q Okay. Well --</p> <p>7 A It was like three parts.</p> <p>8 Q -- why don't I make it simpler.</p> <p>9 A Thank you,</p> <p>10 Q Can you identify any city employee who you</p> <p>11 think got better treatment than you did?</p> <p>12 A Yes.</p> <p>13 Q Okay.</p> <p>14 A Detective D'Andrea, Detective Grosso,</p> <p>15 Detective Torres now, Detective Landau, and there</p> <p>16 are others. I just couldn't think of the instances.</p> <p>17 You asked me to think of them. I couldn't think of</p> <p>18 them.</p> <p>19 Q In reference to the persons you just</p> <p>20 named, do you have any information about their</p> <p>21 receipt of better treatment other than what you've</p> <p>22 already testified to this morning?</p> <p>23 A They didn't get terminated, I did.</p> <p>24 Q Okay. Now in the case of the Detective</p> <p>25 Landau, do you know whether or not he had a</p>	<p>45</p> <p>1 POGGIOLI</p> <p>2 Q And do you know what he said during that</p> <p>3 interview?</p> <p>4 A No.</p> <p>5 Q Do you know whether Detective Grosso was</p> <p>6 interviewed in reference to the allegation that he</p> <p>7 took a cable box?</p> <p>8 A He had to be.</p> <p>9 Q Do you know what he said during his</p> <p>10 interview?</p> <p>11 A No.</p> <p>12 Q In reference to Detective D'Andrea, do you</p> <p>13 know whether he was interviewed in reference to his</p> <p>14 alleged improper use of the computer?</p> <p>15 MS. NICAJ: Objection. You can answer.</p> <p>16 A He had to be. There was an investigation.</p> <p>17 Q Do you know what he said during that</p> <p>18 interview?</p> <p>19 A No.</p> <p>20 Q Okay. Am I correct the allegation</p> <p>21 against him was improper use of a computer that was</p> <p>22 in evidence?</p> <p>23 MS. NICAJ: Objection.</p> <p>24 Q Is that not correct?</p> <p>25 MS. NICAJ: Objection. You can answer.</p>

12 (Pages 42 to 45)

<p>1 POGGIOLI 46</p> <p>2 A Which detective are we talking about?</p> <p>3 Q D'Andrea.</p> <p>4 A D'Andrea?</p> <p>5 Q Yes.</p> <p>6 MS. NICAJ: Improper use.</p> <p>7 A Improper use of the computer?</p> <p>8 Q Right.</p> <p>9 A He took the computer.</p> <p>10 Q My understanding it was a computer that</p> <p>11 had been marked into evidence in a case, am I</p> <p>12 correct?</p> <p>13 A Yes.</p> <p>14 Q Did I understand correctly, he allegedly</p> <p>15 took it home and used it?</p> <p>16 MS. NICAJ: He stole it.</p> <p>17 A And then he destroyed it</p> <p>18 Q Okay, well, that part I didn't know.</p> <p>19 A I'm sorry. I didn't tell you that before.</p> <p>20 Q In reference to that incident, do you know</p> <p>21 whether or not he was interviewed?</p> <p>22 A Oh, he had to be. There was an</p> <p>23 investigation.</p> <p>24 Q Do you know what he said during the</p> <p>25 interview?</p>	<p>1 POGGIOLI 48</p> <p>2 Q Okay. And what is it that he allegedly</p> <p>3 did that he got stung for?</p> <p>4 A He was involved in a operation of</p> <p>5 prostitution and he went down to New York City in</p> <p>6 which they had a sting and he went and solicited a</p> <p>7 prostitute and got arrested.</p> <p>8 Q Okay. So am I correct that your</p> <p>9 understanding is that he was arrested --</p> <p>10 A I'm sorry. He was caught in it. I don't</p> <p>11 know if -- I don't know if they arrested him or they</p> <p>12 reduced the charges. Something like he -- they</p> <p>13 caught him in a sting operation, that I know for</p> <p>14 sure.</p> <p>15 Q When you say "they," you mean the City of New</p> <p>16 York police department?</p> <p>17 A Yeah, I think it was a special unit.</p> <p>18 Q That happened in New York city in the</p> <p>19 1990s?</p> <p>20 A Yes.</p> <p>21 Q And how did you learn about this incident?</p> <p>22 A He was suspended for 30 days and</p> <p>23 Eyewitness News had a truck mounted outside his</p> <p>24 house, so, with the lights on wanting an interview</p> <p>25 and his house is right across the street from police</p>
<p>1 POGGIOLI 47</p> <p>2 A No, I don't know.</p> <p>3 Q In reference to Detective Torres who you</p> <p>4 indicated was involved in a hit and run accident, do</p> <p>5 you know whether he was interviewed in reference to</p> <p>6 that incident?</p> <p>7 A He had to be, yes.</p> <p>8 Q Do you know what he said during the</p> <p>9 interview?</p> <p>10 A No.</p> <p>11 (Brief Recess Taken)</p> <p>12 MR. MEISELS: Based upon our understanding</p> <p>13 that I may continue this deposition on the</p> <p>14 question of damages, I have no further</p> <p>15 questions.</p> <p>16 A I thought of someone else now.</p> <p>17 Q Absolutely. Okay.</p> <p>18 A Officer Finney was --</p> <p>19 MS. NICAJ: Can you spell that?</p> <p>20 A F-I-N-N-E-Y. Was caught in a sting</p> <p>21 operation.</p> <p>22 MS. NICAJ: Off the record.</p> <p>23 (Off the Record)</p> <p>24 Q When did that occur?</p> <p>25 A It was in the '90s. That I remember.</p>	<p>1 POGGIOLI 49</p> <p>2 headquarters so it was very obvious that the news</p> <p>3 caught on to that. I think it was Channel 7</p> <p>4 Eyewitness News. One of those satellite trucks, you</p> <p>5 know.</p> <p>6 Q So am I -- withdrawn.</p> <p>7 So what was the basis for your belief</p> <p>8 that it happened? Was it word of mouth within the</p> <p>9 department?</p> <p>10 A Well, he was suspended for 30 days. It</p> <p>11 was in the newspaper. Eyewitness News was out there</p> <p>12 with a satellite truck broadcasting from in front of</p> <p>13 his house and, you know, kind of --</p> <p>14 Q And how did you learn he was suspended for</p> <p>15 30 days?</p> <p>16 A Well, it's common knowledge but his</p> <p>17 mother -- kind of a sad story. His mother has or</p> <p>18 had, I don't know if she is still alive, dementia</p> <p>19 and she walked over to police headquarters. I think</p> <p>20 she was looking for him, but they lived in the same</p> <p>21 house so that's the sad story about it. They lived</p> <p>22 in the same house and I had to escort her back from</p> <p>23 police headquarters to her house safely because he</p> <p>24 wouldn't leave his house. He was suspended and he</p> <p>25 was obviously embarrassed of the whole situation, so</p>

13 (Pages 46 to 49)

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<p>50</p> <p>1 POGGIOLI</p> <p>2 I was told to bring her back safely to her house,</p> <p>3 which I did.</p> <p>4 Q Do you know whether or not the New</p> <p>5 Rochelle police department ever conducted an</p> <p>6 investigation of Officer Finney's arrest in New York</p> <p>7 City?</p> <p>8 A They had some kind of investigation</p> <p>9 because he was suspended. Like I said, I don't know</p> <p>10 if he was arrested or he was kind of like released</p> <p>11 and he just notified our department. I think he was</p> <p>12 arrested. I'm not sure.</p> <p>13 Q Are you saying that you're not certain</p> <p>14 whether he was arrested or whether he received an</p> <p>15 appearance ticket?</p> <p>16 A It might have been -- I think it was</p> <p>17 dropped down to whatever it was, soliciting a</p> <p>18 prostitute. Maybe disorderly conduct or something</p> <p>19 like that. I think through the courts it was</p> <p>20 eventually dropped down. I don't know what the</p> <p>21 initial charge was.</p> <p>22 Q But do you know whether or not he was</p> <p>23 arrested or whether he was issued an appearance</p> <p>24 ticket?</p> <p>25 A I don't know.</p>	<p>52</p> <p>1 POGGIOLI</p> <p>2 did not commit crimes but they were involved in</p> <p>3 violations of rules and regulations of the New</p> <p>4 Rochelle police department and they were -- one was</p> <p>5 Officer Pitzel, P-I-T-Z-E-L. The other one was</p> <p>6 Vasquez and the other one was Colotti,</p> <p>7 C-O-L-O-T-T-I.</p> <p>8 Q And what is it that Officer Pitzel was</p> <p>9 alleged to have done?</p> <p>10 A Officer Pitzel went to an off-duty special</p> <p>11 duty assignment and no one showed up. None of the</p> <p>12 contractors showed up and he submitted an overtime</p> <p>13 slip for eight hours and he was paid for that.</p> <p>14 Q And when did that occur?</p> <p>15 A I don't know the year.</p> <p>16 Q Was it before the year 2000?</p> <p>17 A No.</p> <p>18 Q After 2000?</p> <p>19 A Yes, I think -- and don't hold me to that,</p> <p>20 please. I think it was 2005.</p> <p>21 Q And what was the basis for your belief</p> <p>22 that this occurred?</p> <p>23 A He told me.</p> <p>24 Q And do you know whether or not that</p> <p>25 incident was ever investigated by the New Rochelle</p>
<p>51</p> <p>1 POGGIOLI</p> <p>2 Q Do you know whether or not the New</p> <p>3 Rochelle police department ever interviewed him</p> <p>4 about this incident?</p> <p>5 A They had to because they suspended him.</p> <p>6 Q Do you know what he said during the</p> <p>7 interview?</p> <p>8 A No.</p> <p>9 Q Are there any other incidents you can think</p> <p>10 of?</p> <p>11 A Not offhand but I'd just like to add</p> <p>12 something else. It's very obvious -- I got to take</p> <p>13 a correction. It's very obvious that the New</p> <p>14 Rochelle police department has condoned all of these</p> <p>15 previous officers that I mentioned by not</p> <p>16 terminating them, not embarrassing them and</p> <p>17 humiliating them like they did to me, and their</p> <p>18 charges and crimes were more serious than mine and I</p> <p>19 didn't even commit a crime or an act.</p> <p>20 Q Do you know if Officer Finney had a</p> <p>21 disciplinary hearing within the New Rochelle police</p> <p>22 department?</p> <p>23 A I don't know. May I add something else?</p> <p>24 Q Sure.</p> <p>25 A There was three other officers that they</p>	<p>53</p> <p>1 POGGIOLI</p> <p>2 police department?</p> <p>3 A I knew that the New Rochelle police</p> <p>4 department was aware of it.</p> <p>5 Q How did you know that?</p> <p>6 A Because at first they questioned him and</p> <p>7 weren't going to pay him, but then they did.</p> <p>8 Q So when you indicate they questioned him,</p> <p>9 do you know who questioned him?</p> <p>10 A I think the assignment officer did.</p> <p>11 Q So would it be fair to say that that</p> <p>12 questioning constituted an investigation?</p> <p>13 MS. NICAJ: Objection.</p> <p>14 A I wouldn't say an investigation.</p> <p>15 Q But it was questioned by the assignment</p> <p>16 officer?</p> <p>17 A I understand it to be, yes.</p> <p>18 Q And what was the -- how do you -- what was</p> <p>19 the basis for your belief that it was questioned by</p> <p>20 the assignment officer?</p> <p>21 A I believe Officer Pitzel told me.</p> <p>22 Q And did Officer Pitzel tell you what he</p> <p>23 said to the assignment officer?</p> <p>24 A No.</p> <p>25 Q Do you know who the assignment officer</p>

14 (Pages 50 to 53)

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<p>54</p> <p>1 POGGIOLI</p> <p>2 was?</p> <p>3 A Sergeant Mergenthaler,</p> <p>4 M-E-R-G-E-N-T-H-A-L-E-R.</p> <p>5 Q Am I correct Sergeant Mergenthaler is no</p> <p>6 longer employed by the New Rochelle police</p> <p>7 department?</p> <p>8 A He's retired.</p> <p>9 Q You had mentioned an Officer Vasquez?</p> <p>10 A Yes.</p> <p>11 Q What is it that he allegedly did?</p> <p>12 A That was the same exact incident because</p> <p>13 he was with Officer Pitzel.</p> <p>14 Q Am I correct that Officer Vasquez and</p> <p>15 Officer Pitzel were working together at the same</p> <p>16 time?</p> <p>17 A Yes.</p> <p>18 Q And am I correct that the incident had the</p> <p>19 same result?</p> <p>20 A Yes.</p> <p>21 Q And lastly you mentioned Officer Colotti.</p> <p>22 What was he accused of doing?</p> <p>23 A Officer Colotti and myself worked a</p> <p>24 special duty detail and it ended at a certain time.</p> <p>25 It ended early and the contractor advised myself</p>	<p>56</p> <p>1 POGGIOLI</p> <p>2 A I don't know.</p> <p>3 MR. MEISELS: No further questions subject</p> <p>4 to our stipulation about damages.</p> <p>5 MS. NICAJ: Sure.</p> <p>6 THE WITNESS: Thank you.</p> <p>7 MR. MEISELS: Thank you.</p> <p>8 (Time Noted: 11:47 AM)</p> <p>9</p> <p>10 <u>JOSEPH POGGIOLI</u></p> <p>11</p> <p>12</p> <p>13 Subscribed and sworn to before me this ____ day</p> <p>14 of _____ 2007.</p> <p>15 _____, Notary Public.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>55</p> <p>1 POGGIOLI</p> <p>2 that the job was over and Officer Colotti stayed at</p> <p>3 that job even though we were told to -- that the job</p> <p>4 was finished, and Officer Colotti put in for extra</p> <p>5 time that he was there.</p> <p>6 Q And when did this occur?</p> <p>7 A I believe it was 2005 also.</p> <p>8 Q Where was the job?</p> <p>9 A On Main Street in New Rochelle.</p> <p>10 Q Who was the private employer?</p> <p>11 A Con Edison.</p> <p>12 Q And how did you learn that Officer Colotti</p> <p>13 stayed after you left?</p> <p>14 A Because he never came in. I mean, we were</p> <p>15 both told to leave and he stayed there.</p> <p>16 Q How did you learn that he put in for extra</p> <p>17 time?</p> <p>18 A I believe I saw him later on in the day</p> <p>19 and he came in.</p> <p>20 Q Do you know whether or not that was ever</p> <p>21 investigated by the New Rochelle police department?</p> <p>22 A I don't know. I did advise Captain</p> <p>23 Gazzola [ph] of it though.</p> <p>24 Q Do you know whether or not Captain Gazzola</p> <p>25 ever spoke to Officer Colotti about the incident?</p>	<p>57</p> <p>1 POGGIOLI</p> <p>2 I N D E X</p> <p>3 WITNESS</p> <p>4 JOSEPH POGGIOLI</p> <p>5 EXAMINATION BY</p> <p>6 MR. MEISELS 4</p> <p>7</p> <p>8 EXHIBITS</p> <p>9</p> <p>10 DEFENDANTS' PAGE</p> <p>11 A - Previously marked 5</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19 Mr. Meisels has retained all exhibits.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

15 (Pages 54 to 57)

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1 POGGIOLI
2 CERTIFICATION
3

4 I, SUSIE CABANAS-DIAZ, a Court Reporter
5 and Notary Public within and for the State
6 of New York, do hereby certify:

7 That the witness whose deposition
8 is herein before set forth, was duly sworn
9 by me, and that the within transcript is a
10 true record of the testimony given by such
11 witness.

12 I further certify that I am not
13 related to any of the parties to this action
14 by blood or marriage, and that I am in no way
15 interested in the outcome of this matter.

16 IN WITNESS WHEREOF, I have hereunto
17 set my hand this day of , 2007.
18
19
20

21 _____
22 SUSIE CABANAS-DIAZ
23
24
25

59

1 POGGIOLI
2 ERRATA SHEET
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7 NAME OF CASE: POGGIOLI VS. CARROLL ET AL.
8 DATE OF DEPOSITION: OCTOBER 30, 2007

9 NAME OF DEPONENT: JOSEPH POGGIOLI

10 PAGE LINE(S) CHANGE REASON

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17	_____	_____	_____
18	_____	_____	_____

19 _____
20 JOSEPH POGGIOLI

21 Subscribed and sworn to before me
22 this _____ day of _____, 2007
23 _____, Notary Public.

24 MY COMMISSION EXPIRES:
25 _____

16 (Pages 58 to 59)

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EXHIBIT 5

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STATE OF NEW YORK
CITY OF NEW ROCHELLE

..... X
In the matter of the Disciplinary Charges
Preferred by CAPTAIN KEVIN KEALY,

Charging Party,

-against-

POLICE OFFICER JOSEPH POGGIOLI,

Charged Party.

..... X

May 16, 2006
1:45 p.m.

B E F O R E : ROBERT PONZINI, ESQ.,
 Hearing Officer

A P P E A R A N C E S :

LAW OFFICE OF VINCENT TOOMEY
Attorneys for the Charging Party
3000 Marcus Avenue
Lake Success, New York 11042
BY: KEVIN T. KEARON, Esquire,
 of Counsel

LOVETT & GOULD, LLP
Attorneys for the Charged Party
222 Bloomingdale Road
White Plains, New York 10605
BY: JONATHAN LOVETT, Esquire,
 of Counsel

A L S O P R E S E N T :
 JOSEPH POGGIOLI
 EDWARD HAYES

Hayes - Direct

A. 15 years and a little over six months.

Q. How long have you been employed in total by the city in the capacity as a police officer?

A. The same, 15 years, six months, and a couple of days.

Q. Do you know Kevin Kearon who's seated to your left?

A. Yes, I do.

Q. Do you recall that Tom Marcoline was at this proceeding, other than today?

A. Yes, I do.

Q. Did you know either or both of them prior to the commencement of this disciplinary?

A. Yes, I did.

Q. In what connection?

A. In the capacity of working as the Police Officers Association president here in the City of New Rochelle for the Police Officers Association.

Q. Are you the president of the association?

A. Yes, I am.

Q. How long have you held that position?

A. This is my second year.

Q. Did you ever have occasion to observe Mr. Marcoline, Mr. Kearon and a member of the police department

1 Hayes - Direct

2 engage in any conversation about Joe Poggioli and this
3 disciplinary?

4 MR. KEARON: Objection, relevance.

5 THE HEARING OFFICER: Is there an offer of
6 proof on this?

7 MR. LOVETT: Yes. Mr. Kearon said to a
8 high-ranking member of the department in a hallway in
9 headquarters, "How are they going to explain going
10 after Poggioli when other people have done the same
11 thing?"

12 THE HEARING OFFICER: Objection sustained.

13 MR. LOVETT: Excuse me?

14 THE HEARING OFFICER: Objection sustained.

15 MR. LOVETT: On what theory?

16 THE HEARING OFFICER: I don't believe there's
17 any relevance to this proceeding.

18 MR. LOVETT: Oh, come on.

19 THE HEARING OFFICER: That's an opinion of
20 counsel. It has nothing to do with what the city --

21 MR. LOVETT: He's talking with his client and
22 he asked the client the question.

23 THE HEARING OFFICER: Sustained.

24 MR. LOVETT: Then I'll call Kevin Kearon. I'm
25 going to make a record, Mr. Ponzini, with or without

1 Hayes - Direct

2 you.

3 THE HEARING OFFICER: You can make the record.
4 You have your objection. If I'm wrong, I'm wrong. I
5 don't believe that that's relevant or material. You
6 can call somebody perhaps in I guess what I would
7 call the administration of the New Rochelle Police
8 Department. If you want to try and make out a
9 selective prosecution case, to the extent that it's
10 relevant, that other people in similar circumstances
11 haven't been prosecuted. But I think clearly a
12 conversation between Mr. Kearon and/or a member of
13 the police department is not relevant and material
14 for the purpose of this hearing.

15 MR. LOVETT: It goes to the selective
16 prosecution and their awareness of it. And I intend
17 to ask others about others who have done exactly what
18 my client is alleged to have done.

19 THE HEARING OFFICER: It may be more
20 appropriate for those witnesses. But I think a
21 secondhand conversation between the attorney and a
22 member of the administration I'm not going to allow.

23 MR. LOVETT: It's not secondhand. This witness
24 was there and he heard them.

25 THE HEARING OFFICER: I'm not going to allow

1 Hayes - Direct

2 it. But if you want to try and introduce it in some
3 other way when you have other witnesses, you can make
4 an inquiry.

5 MR. KEARON: Before you continue. I just want
6 to make a record on this point.

7 I want the record to reflect that my silence in
8 not responding to this allegation of sorts is in no
9 way intended to be a concession that such a statement
10 was made.

11 I'm not going to address the merits of the
12 allegation or the statements attributed to me here.

13 THE HEARING OFFICER: You have your record.

14 Q. When you heard the conversation about which
15 you're now forbidden to testify, was there anybody from the
16 police department brass, if you will, who was present with
17 Mr. Marcoline and Mr. Kearon?

18 MR. KEARON: Same objection.

19 THE HEARING OFFICER: Overruled.

20 A. Yes.

21 Q. Who?

22 A. Captain Kevin S. Kealy.

23 MR. LOVETT: Thank you.

24 I have nothing further.

25 THE HEARING OFFICER: Any questions, Mr.

EXHIBIT 6

HEARING

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STATE OF NEW YORK
CITY OF NEW ROCHELLE

..... X
In the matter of the Disciplinary Charges
Preferred by CAPTAIN KEVIN KEALY,

Charging Party,

-against-

POLICE OFFICER JOSEPH POGGIOLI,

Charged Party.

..... X

June 19, 2006
10:30 a.m.

B E F O R E : ROBERT PONZINI, ESQ.,
 Hearing Officer

A P P E A R A N C E S :

LAW OFFICE OF VINCENT TOOMEY
Attorneys for the Charging Party
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BY: KEVIN T. KEARON, Esquire,
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222 Bloomingdale Road
White Plains, New York 10605
BY: JONATHAN LOVETT, Esquire,
 of Counsel

A L S O P R E S E N T :
 JOSEPH POGGIOLI
 EDWARD HAYES

HEARING

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1 Carroll - Direct

2 You may inquire, Mr. Lovett.

3 DIRECT EXAMINATION

4 BY MR. LOVETT:

5 Q. By whom are you employed?

6 A. The City of New Rochelle.

7 Q. In what capacity?

8 A. Police Commissioner.

9 Q. Is that an appointed position?

10 A. It is.

11 Q. How long have you held that title?

12 A. 12 and a half years.

13 Q. Are you generally familiar with the police
14 department's rules, policies and procedures?

15 A. Yes.

16 Q. Do you have an internal affairs unit?

17 A. Yes, I do.

18 Q. And staffed by whom?

19 A. Lieutenant James Fortunato.

20 Q. And he's been in charge of internal affairs for
21 approximately how long?

22 A. Let's see --

23 Q. Roughly.

24 A. Five years maybe.

25 Q. And his responsibility is what?

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2 A. His responsibility is to conduct sensitive
3 investigations, look into confidential matters that I may
4 direct him to. He reports directly to me. And it could be
5 sometimes a minute investigation involving a civilian
6 complaint, it could be somewhat sensitive or not.

7 Q. Are there any instances where a complaint
8 against a member of the police department, that is a sworn
9 member, is required to be investigated by somebody other
10 than Lieutenant Fortunato?

11 A. Yes.

12 Q. And what are they?

13 A. It could be forms of misconduct, forms of
14 violating the manual of procedures. It could be a civilian
15 complaint. There's probably quite a variety, depending on
16 the seriousness of it, the confidentiality, the timing.
17 All those would take part in deciding the immediacy of the
18 investigation.

19 Q. Who makes the decision as to whether Fortunato
20 does the investigation or not?

21 A. It could be me or it could be the captain in
22 charge of the unit.

23 Q. Does the Deputy Commissioner have any role in
24 deciding who does the conduct of an investigation where
25 there's an allegation of misconduct against a sworn member

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2 of the department?

3 A. He may at times, yes.

4 Q. With respect to this case, are you aware that
5 disciplinary charges were filed by Captain Kealy?

6 A. Yes, I am.

7 Q. When were you first aware of that?

8 MR. KEARON: Objection, relevance.

9 THE HEARING OFFICER: Overruled.

10 You can answer it.

11 A. I really don't know the time frame. Is that
12 what you're looking for?

13 Q. Let me rephrase the question.

14 Were you aware that charges were going to be
15 filed by the captain against Poggioli before the charges
16 were actually filed?

17 A. Yes.

18 Q. Did you have any occasion to discuss the
19 charges, whether proposed or drafted, with Captain Kealy
20 before the charges were filed?

21 MR. KEARON: Objection to relevance.

22 THE HEARING OFFICER: Overruled.

23 If you know.

24 A. I'm not sure.

25 Q. Did you discuss the charges with Deputy

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2 Commissioner Murphy?

3 A. Yes.

4 Q. Was that before or subsequent to the point in
5 time when the charges were filed by Kealy?

6 A. I'm not sure.

7 Q. Looking at the charges which have a date --
8 would looking at the charges potentially refresh your
9 memory as to the time frame?

10 A. It might, yes.

11 MR. LOVETT: Could we have Hearing Officer
12 Exhibit 2?

13 THE HEARING OFFICER: I didn't bring all the
14 exhibits with me. I don't have the originals.

15 MR. LOVETT: I have a copy.

16 MR. KEARON: I think I do have the originals
17 but I didn't bring them with me.

18 THE HEARING OFFICER: I didn't bring them.

19 MR. LOVETT: I have a copy that I'll show the
20 Commissioner.

21 Q. Does that jog your memory as to whether you
22 spoke with Deputy Commissioner Murphy before or after the
23 charges were filed?

24 A. I would have to answer most likely before the
25 charges were filed.

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2 Q. Do you have a police officer on the job named
3 John Young?

4 A. Yes.

5 Q. How long have you known him?

6 A. I guess the 12 and a half years I'm employed.

7 Q. Are you aware that he from time to time works
8 an off-duty assignment?

9 MR. KEARON: Objection, relevance.

10 THE HEARING OFFICER: Overruled. I'll allow it
11 to go a little further.

12 A. I'm not aware, no.

13 Q. Are you aware of a situation where both he and
14 Joe Poggioli worked an off-duty assignment, a claim was
15 made that they had not worked all of the hours they were
16 supposed to, and they were told to redraft their
17 documentation showing a reduction in time?

18 MR. KEARON: Same objection.

19 THE HEARING OFFICER: Overruled.

20 A. I'm not aware.

21 Q. Has anybody, prior to now, ever indicated to
22 you, in words or substance, that Officer Young submitted a
23 request for compensation for working an off-duty job where
24 it was subsequently determined that he had not worked the
25 amount of time indicated in his documentation?

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2 A. I'm not aware, no.

3 Q. What is the protocol in your department for
4 having somebody in the traffic division do an internal
5 affairs investigation?

6 MR. KEARON: Objection.

7 THE HEARING OFFICER: I'm going to sustain it
8 as to form.

9 Q. Are you aware that a sergeant assigned to
10 traffic actively participated in the investigation of Joe
11 Poggioli in this case?

12 MR. KEARON: Objection.

13 THE HEARING OFFICER: Overruled.

14 A. No, I'm not.

15 Q. Are there any answers that you've given that
16 you want to change at this point?

17 MR. KEARON: Objection.

18 THE HEARING OFFICER: Overruled.

19 You can answer it.

20 A. To my knowledge, I'm not aware.

21 MR. LOVETT: Fine. Thank you.

22 THE HEARING OFFICER: Mr. Kearon, did you want
23 to ask the Commissioner any questions?

24 MR. KEARON: No.

25 THE HEARING OFFICER: Thank you very much,

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2 Commissioner. You're excused.

3 (Witness excused)

4 (Recess)

5 THE HEARING OFFICER: Let's go back on the
6 record.

7 We had an off-the-record discussion. Mr.
8 Kearon, on behalf of the Commissioner, indicated that
9 he was contacted by the Commissioner, who, after
10 reviewing his testimony in his mind, thinks he may
11 have made one statement that he would either like to
12 amplify and/or correct. So we're going to give him
13 the opportunity to come back and to either sua sponte
14 make a statement, and then I'll allow each of the
15 attorneys ask a follow-up question or two, if
16 necessary.

17 Commissioner Carroll, we're on the record
18 again. You're still under oath as having been
19 previously sworn.

20 We were informed by Mr. Kearon, the attorney
21 for the City of New Rochelle, that there was
22 something in your direct testimony that you either
23 wanted to amplify, correct or in some way modify.

24 I'll give you the opportunity to make a
25 statement, and then, perhaps, if either Mr. Lovett or

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1 Carroll - Direct

2 Mr. Kearon have a follow-up question, they may ask
3 you so.

4 THE WITNESS: Thank you.

5 THE HEARING OFFICER: You may proceed.

6 THE WITNESS: I believe I was asked if I was
7 aware of certain things. And at some point probably
8 I was in the past, and I'm not aware of them now.

9 Probably my correct answer would be I don't
10 recall rather than say I'm not aware because
11 probably, if I read something, it might refresh my
12 memory and I would be aware. Because I sign many
13 things, I handle many papers. And probably the
14 better answer would be I don't recall.

15 THE HEARING OFFICER: Did you want to follow up
16 with a question or two, Mr. Lovett?

17 MR. LOVETT: Yes.

18 DIRECT EXAMINATION (Continued)

19 BY MR. LOVETT:

20 Q. Is the testimony you just gave related to my
21 inquiry about Police Officer John Young?

22 A. No.

23 Q. What does it relate to?

24 A. The traffic sergeant, I believe you asked, if I
25 was aware.

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2 Q. So you think you may have been aware at some
3 point in time but you don't presently, however, recall?

4 A. That's correct.

5 MR. LOVETT: Okay. Thank you.

6 MR. KEARON: I want to make sure that we're
7 talking about the same question. And the question,
8 as I recall it, is at some point in time did you
9 become aware that either a traffic supervisor or
10 sergeant -- I think it was sergeant -- I don't think
11 any name was given -- but that a traffic sergeant
12 played some role in the investigation of Officer
13 Poggioli.

14 THE HEARING OFFICER: Yes, I believe that's the
15 question, and it's clear in my mind.

16 Thank you, Commissioner.

17 (Witness excused)

18 A N T H O N Y M U R P H Y, having been first duly
19 sworn by the Hearing Officer, was examined and
20 testified as follows:

21 THE HEARING OFFICER: Good morning, sir.

22 THE WITNESS: Good morning.

23 THE HEARING OFFICER: Can we have your name and
24 business address for the record.

25 THE WITNESS: Anthony Murphy, 475 North Avenue,

EXHIBIT 7

STATE OF NEW YORK
CITY OF NEW ROCHELLE

..... X

In the matter of the Disciplinary Charges
Preferred by CAPTAIN KEVIN KEALY,

Charging Party,

-against-

POLICE OFFICER JOSEPH POGGIOLI,

COPY

Charged Party.

..... X

July 7, 2006
2:45 p.m.

B E F O R E : ROBERT PONZINI, ESQ.,
Hearing Officer

A P P E A R A N C E S :

LAW OFFICE OF VINCENT TOOMEY
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222 Bloomingdale Road
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BY: JONATHAN LOVETT, Esquire,
of Counsel

A L S O P R E S E N T :

JOSEPH POGGIOLI

Proceedings

THE HEARING OFFICER: Good afternoon. We're on the record.

This is the continuation of the hearing of Officer Poggioli.

Could each side please note their appearance.

MR. KEARON: For the charging party, the Law Office of Vincent Toomey, by Kevin Kearon.

Good afternoon.

MR. LOVETT: For the charged party, Jonathan Lovett of Lovett & Gould.

THE HEARING OFFICER: Let the record reflect that the charged party is present with his attorney. Unfortunately, his union representative couldn't make it, he had a prior commitment.

But I understand you're still willing to proceed in his absence, is that correct, Mr. Lovett?

MR. LOVETT: Yes.

THE HEARING OFFICER: Thank you.

You can call your next witness, Mr. Lovett.

MR. LOVETT: We call Police Officer John Young.
J O H N F. Y O U N G , having been first duly sworn
by the Hearing Officer, was examined and testified as
follows:

THE HEARING OFFICER: Can we have your full

1 / Proceedings

2 name and business address for the record?

3 THE WITNESS: Full name is John F. Young. My
4 address is 475 North Avenue, New Rochelle, New York.

5 THE HEARING OFFICER: Officer Young, my name is
6 Robert Ponzini, I'm the Hearing Officer assigned to
7 these proceedings.

8 You're going to be asked a series of questions,
9 first by Mr. Lovett on behalf of his client and
10 perhaps by Mr. Kearon on cross-examination.

11 When you hear the question, please respond in a
12 loud and clear voice so everyone in the room can hear
13 you, most of all our stenographer.

14 Only a verbal answer is acceptable. If you nod
15 your head or shrug your shoulders, we can't put that
16 in the record.

17 If you hear one of the attorneys say
18 "objection" or "I object," wait until I rule on it
19 and I'll tell you whether you should answer the
20 question or not.

21 If you need a break, don't understand
22 something, anything of that nature, let me know and
23 I'll accommodate you.

24 Do you understand my instructions?

25 THE WITNESS: Yes.

Proceedings

THE HEARING OFFICER: You may proceed, Mr.

Lovett.

DIRECT EXAMINATION

BY MR. LOVETT:

Q. Officer, by whom are you employed?

A. New Rochelle Police Department.

Q. And your job position is what?

A. Patrol officer.

Q. How long have you been employed in that capacity by the city?

A. 12 years and two months.

Q. Do you know Joseph Poggioli, who is seated to my left?

A. Yes, I do.

Q. Who do you know him to be?

A. An officer with the department.

Q. Have you ever had occasion to work an off-duty job with him within the City of New Rochelle?

A. Yes, I have.

Q. Did you ever have occasion to work an off-duty job with Joe Poggioli where the job was supposed to run from 9:00 a.m. to 5:00 p.m. and, in fact, it ran late?

MR. KEARON: Objection.

THE HEARING OFFICER: Overruled.

1 / Young - Direct

2 THE WITNESS: Yes, I have.

3 Q. Do you know for whom that job was run?

4 A. I don't remember the contractor's name offhand.

5 Q. Do you know where the location of the job was?

6 A. The location of the job was Potter and Pierce
7 Street in New Rochelle.

8 Q. Potter?

9 A. Potter and Pierce.

10 Q. Did you and Officer Poggioli, in fact, arrive
11 at 9:00 a.m.?

12 A. I arrived about 9:05 and Officer Poggioli
13 arrived between 9:10 and 9:15.

14 Q. And approximately how late did you work that
15 job?

16 A. Approximately 5:45 that day.

17 Q. And subsequent to performing that work, was any
18 document submitted by you and Officer Poggioli with respect
19 to the hours that you had worked?

20 A. We submitted overtime sheets from 9:00 o'clock
21 to 5:00 o'clock and a separate sheet from 5:00 o'clock to
22 6:00 o'clock for the extra hour that we were there.

23 Q. And after you submitted those documents, did
24 anybody, in effect, return them or either of them back to
25 you to be changed?

1 Young - Direct

2 A. Yes.

3 MR. KEARON: Same objection.

4 THE HEARING OFFICER: Overruled.

5 Q. And who was that?

6 A. It was brought back to our attention from my
7 captain, Captain Gazzola, that we needed to redo our
8 overtime hours.

9 Q. And what, if any, reason were you given for
10 that?

11 A. One of the contractors told them that we got
12 there about 9:30 and the job was over about 5:30.

13 Q. And based on the request to redo the
14 submissions, did you, in fact, redo them?

15 A. Yes, I did.

16 Q. To reflect what time of arrival and what time
17 of departure?

18 A. I put arrival time 9:30 and departure 5:30.

19 Q. As a result of that change, was there time that
20 you and Officer Poggioli actually worked that job for which
21 you weren't paid?

22 A. Yes. There was an extra 15 minutes that we
23 did, until 5:45 or 5:40, and we didn't get paid for that.
24 And I was there since 9:05 and I didn't get paid from 9:00
25 o'clock to 9:30, so I was missing that.

Young - Direct

Q. And following the submission of the corrected or changed overtime requests, were you brought up on disciplinary charges with respect to the incident?

A. No, I was not.

MR. LOVETT: Thank you very much.

I have nothing further.

THE HEARING OFFICER: Mr. Kearon?

MR. KEARON: Briefly.

CROSS-EXAMINATION

BY MR. KEARON:

Q. My name is Kevin Kearon.

Good afternoon, officer.

A. Good afternoon.

Q. Would you please describe for me the nature of your relationship, if any, with Police Officer Joseph Poggioli?

A. He's an officer on the job with me. I knew him for about the same 12 years I've been here. That's about as far as that goes.

Q. How, for the first time, did you learn that you would be called as a witness in this case?

A. Maybe about two months ago or something like that, he says that I might be getting a subpoena in regards to the job that we did on Pierce and Potter.

Young - Cross

Q. When you say he, are you speaking of Officer Poggioli?

A. Officer Poggioli.

Q. And where did that conversation take place?

A. Headquarters.

Q. And after he told you what you've just told us, did you have any conversation with him about that job?

A. No, not necessarily. He just told me -- you know, he asked me, do I remember the job. And I said yes. He said, "When you go to the hearing, just tell them what happened, tell them the truth."

Q. And did you, in fact, work the hours that you represented you had worked when you submitted your original request for overtime?

A. In regards to 9:00 o'clock exactly -- I got there 9:05 and I did put down 9:00 o'clock.

But with regards to 6:00 o'clock, yes, because the job was over at 5:45. But by the time we got back to headquarters, it was about 6:00 o'clock.

Q. And were you ever the subject of an interview with superiors that was tape recorded in connection with your submission of those overtime request?

A. No, not that I'm aware of.

Q. If, in fact, you had worked the hours that you

1 / Young - Cross
2 had claimed, with the possible exception of the five-minute
3 issue raised earlier, why then did you agree to modify your
4 overtime request to delete the request for that additional
5 hour?

6 A. Actually, the half hour or 45 minutes wasn't
7 worth the hassle. So I said, forget about it, I'll just
8 put the time on it that they wanted.

9 MR. KEARON: No further questions.

10 Thank you.

11 MR. LOVETT: Can I have a second?

12 THE HEARING OFFICER: Yes.

13 (Recess)

14 MR. LOVETT: I have nothing further.

15 THE HEARING OFFICER: You're excused, Officer.

16 Thank you very much.

17 (Witness excused)

18 THE HEARING OFFICER: Off the record.

19 (Discussion off the record)

20 THE HEARING OFFICER: We've had a brief
21 discussion off the record with the attorneys and with
22 the charged party present.

23 Mr. Lovett, do you rest at this time?

24 MR. LOVETT: Yes, I do.

25 THE HEARING OFFICER: Is there any rebuttal